

DEC 14 2005

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

CASE NO. 04-98349

Keela Lynn Damiano,

CHAPTER 7

Debtor.

JUDGE MASSEY

ORDER

Carol Hallford, who is Debtor's mother, moves for an order allowing her late-filed claim in the amount of \$222,789.10. The Court held a hearing on the motion on November 29, 2005, at which Wachovia Bank opposed the motion.

Bankruptcy Rule 3002(c) governs the setting of deadlines for filing proofs of claim in cases under Chapters 7, 12 and 13. It provides:

(c) Time for filing.

In a chapter 7 liquidation, chapter 12 family farmer's debt adjustment, or chapter 13 individual's debt adjustment case, a proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors called under § 341(a) of the Code, except as follows:

- (1) A proof of claim filed by a governmental unit is timely filed if it is filed not later than 180 days after the date of the order for relief. On motion of a governmental unit before the expiration of such period and for cause shown, the court may extend the time for filing of a claim by the governmental unit.
- (2) In the interest of justice and if it will not unduly delay the administration of the case, the court may extend the time for filing a proof of claim by an infant or incompetent person or the representative of either.
- (3) An unsecured claim which arises in favor of an entity or becomes allowable as a result of a judgment may be filed within 30 days after the judgment becomes

final if the judgment is for the recovery of money or property from that entity or denies or avoids the entity's interest in property. If the judgment imposes a liability which is not satisfied, or a duty which is not performed within such period or such further time as the court may permit, the claim shall not be allowed.

(4) A claim arising from the rejection of an executory contract or unexpired lease of the debtor may be filed within such time as the court may direct.

(5) If notice of insufficient assets to pay a dividend was given to creditors pursuant to Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall notify the creditors of that fact and that they may file proofs of claim within 90 days after the mailing of the notice.

In this case, the initial notice to creditors of the commencement of the case informed them not to file claims unless they received a subsequent notice to do so. At the Trustee's request, the Clerk sent a second notice to creditors on March 12, 2005, advising them that the deadline for filing claims was fixed at June 10, 2005. Debtor did not include Ms. Hallford on her schedules or on the mailing matrix, and so presumably she never got the initial notice of the commencement of the case. Her name and a post office address appear on the certificate of service of the notice setting a deadline for filing proofs of claim, but at the hearing, her attorney stated that she did not receive that notice. She acknowledged, however, that she knew about this case shortly after her daughter filed it. As will be shown, the Court may not extend the time for filing a timely claim, even if she did not receive that second notice.

Under Bankruptcy Rule 3002(c), there are only five exceptions to the general rule that requires a creditor to file a proof of claim in a Chapter 7, 12 or 13 case within 90 days of the first date set for the meeting of creditors. The failure of a creditor to receive notice of the deadline is not a ground for deeming a late-filed proof of claim timely.

Bankruptcy Rule 9006(b)(3) concerns the power of the bankruptcy court to extend time for performing certain acts, and it states:

(3) Enlargement Limited. The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 8002, and 9033, *only to the extent and under the conditions stated in those rules.* (Emphasis added.)

Thus, in no uncertain terms, these Rules provide that a bankruptcy judge lacks the authority to extend the time within which a creditor may file a claim beyond the applicable time frames set forth in Bankruptcy Rule 3002(c). The case law uniformly supports this conclusion. *Jones v. Arross*, 9 F.3d 79, 81 (10th Cir. 1993) (“Rule 3002(c) allows no exception to the filing deadline for a creditor who was not notified of a bankruptcy. *In re Wilson*, 90 B.R. 491, 492-93 (Bankr. N.D.Ala.1988); *In re King*, 90 B.R. 155, 156, 158 (Bankr. E.D.N.C.1988); *In re Chirillo*, 84 B.R. 120, 121-22 (Bankr. N.D.Ill.1988).”). *In re Coastal Alaska Lines, Inc.*, 920 F.2d 1428, 1432 (9th Cir. 1990) (“Bankruptcy Rule 3002(c) is peremptory and that a bankruptcy court lacks any equitable power to enlarge the time for filing a proof of claim unless one of the six situations in Rule 3002(c) exists.” *In re S.A. Morris Paving Co.*, 92 B.R. 161, 163 (Bankr. W.D.Va.1988) (*emphasis added*); *see also In re Guarantee Electric, Inc.*, 91 B.R. 164, 165 (Bankr. M.D.Fla.1988); *In re Wilson*, 90 B.R. 491, 493 (Bankr. N.D.Ala.1988); *Miller v. Austin*, 72 B.R. 893, 894, 897-98 (S.D.N.Y.1987).”). *Cf. In re Jensen*, 2005 WL 3144064, *3 (Bankr. M.D.Fla..2005) (“Section 502(b)(9) and Rule 3002(c) clearly provide that a tardy claim, even if filed late through no fault of the claimant, is disallowed in a Chapter 13 case.”); *In re Miranda* 269 B.R. 737, 738 (Bankr. S.D.Tex. 2001) (same).

A proof of claim is deemed allowed when filed, whether or not it is late. 11 U.S.C. § 502(a). Ms. Hallford filed her proof of claim on November 3, 2005, the same date on which she filed her motion. The very next day, the Trustee filed a report showing the distributions to creditors, which the United States Trustee approved. So it is likely that the Trustee has already disbursed the funds. (This shows what mischief could ensue if a judge could willy, nilly extend the deadline for filing claims.) The untimely filing of a claim is a ground for objecting to its allowance. 11 U.S.C. § 502(b)(9). Even a late claim in a Chapter 7 case could be paid, if all other claims have been paid, 11 U.S.C. 726((a)(2), but here timely filed claims were not paid in full.

This leaves the question whether the Trustee or Wachovia should be forced to object to Ms. Hallford's claim. The answer is no because Ms. Hallford raised the issue of timeliness herself and Wachovia opposed her motion, which is the equivalent of an objection to her claim.

The disallowance of a late claim filed by a creditor who did not receive proper notice of the bankruptcy may seem harsh, but the rule is necessary to have an efficient administration of a bankruptcy estate. The rule is mitigated by section 523(a)(3), which provides that a discharge does not include a claim that is

neither listed nor scheduled under section 521 (1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—

(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing[.]

This section would not help Ms. Hallford (assuming for the sake of argument that she would want to sue her daughter to collect the debt) because she admits that she had actual knowledge of the case in time to file a claim.

Accordingly, it is

ORDERED that the Motion for Filing Late Proof of Claim, Motion for Oral Argument and Motion to Enjoin Chapter 7 Trustee From Disbursing Assets Until Motion to File Late Proof of Claim is Heard filed by Carol Hallford (document no. 41) is DENIED, and claim no. 11 filed by Ms. Hallford is DISALLOWED.

Dated: December 13, 2005.



JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE